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**JUL 31 2001**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of )  
Petition of WorldCom, Inc. Pursuant )  
to Section 252(e)(5) of the )  
Communications Act for Expedited )  
Preemption of the Jurisdiction of the )  
Virginia State Corporation Commission )  
Regarding Interconnection Disputes )  
with Verizon-Virginia, Inc., and for )  
Expedited Arbitration )  
\_\_\_\_\_ )

CC Docket No. 00-218 /

**DIRECT TESTIMONY OF SHERRY LICHTENBERG**

**ON BEHALF OF WORLDCOM, INC.**

**(Issues I-8 & I-11)**

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ENCLOSURE

046

**July 31, 2001**

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18 with WorldCom and fifteen years with AT&T. Prior to joining WorldCom, I was Pricing  
19 and Proposals Director for AT&T Government Markets, Executive Assistant to the  
20 President, and Staff Director for AT&T Government Markets. My special expertise is in  
21 testing and requirements analysis. My WorldCom experience includes conducting  
22 market entry testing for New York, Texas and other states, as well as representing  
23 WorldCom and its subsidiary, MCI metro Access Transmission Services, Inc.

1 (hereinafter, "MCImetro"), in the Michigan, Texas, New York, Pennsylvania, Georgia  
2 and California third-party Operations Support Systems ("OSS") testing efforts. My  
3 AT&T experience includes working on the development of the System 85 and System 75  
4 (major Private Branch Exchanges ("PBXs")), product marketing and product  
5 management in both the large business and federal areas.

6 **Q. What is the purpose of your testimony?**

7 A. The purpose of my testimony is to explain WorldCom's concerns regarding two  
8 of the issues in this proceeding that are related to operations support systems—Issue I-8  
9 and Issue I-11—and to address the comments on this issue that Verizon included in its  
10 Response to WorldCom's Issues List.

11 **Issue I-8**

12 *May Verizon monitor WorldCom's access to and use of customer proprietary network*  
13 *information made available to WorldCom?*

14 **Q. Would you please summarize WorldCom's position on Issue I-8?**

15 A. WorldCom objects to Verizon's proposal to include language in the  
16 interconnection agreement that would permit Verizon to monitor WorldCom's access to  
17 and use of consumer proprietary network information, also referred to as "CPNI."

18 **Q. What is CPNI?**

19 A. CPNI is private customer information. This may include information regarding  
20 the calls that the customer places, the extent of the customer's subscription to service, and  
21 other information included within the customer's records. The Telecommunications Act

1 defines CPNI as:

2 (A) information that relates to the quantity, technical configuration, type,  
3 destination, location, and amount of use of a telecommunications service  
4 subscribed to by any customer of a telecommunications carrier, and that is made  
5 available to the carrier by the customer solely by virtue of the carrier-customer  
6 relationship; and

7 (B) information contained in the bills pertaining to telephone exchange service or  
8 telephone toll service received by a customer of a carrier.

9 47 U.S.C. § 222(h)(1).

10 **Q. Please describe the type of CPNI that WorldCom accesses and/or uses.**

11 A. WorldCom accesses and uses only one type of CPNI – the customer service  
12 record (“CSR”). The CSR includes the customer’s name, address, telephone number, and  
13 the features and functions of the customer’s current subscription.

14 **Q. Under what circumstances does WorldCom access or use that form of CPNI?**

15 A. WorldCom only accesses other carriers’ customers’ CPNI during inbound or  
16 outgoing telemarketing calls. When a potential customer contacts WorldCom and  
17 requests information about subscribing to WorldCom services, WorldCom may access  
18 that customer’s CSR. Consistent with the FCC’s rules, WorldCom first obtains the  
19 customer’s consent to access those records, and the consent is then verified by a third  
20 party; after the consent is verified, WorldCom will access that customer’s CSR, which, as  
21 explained above, contains CPNI. In addition, if WorldCom contacts a potential customer  
22 regarding WorldCom services, and if that customer expresses interest in subscribing to

1 WorldCom, WorldCom will follow the same procedure for obtaining consent to access  
2 the CSR; after receiving that consent WorldCom will access that customer's CPNI.  
3 WorldCom may access its own customers' CPNI if the customer calls for information or  
4 with other questions regarding its subscription.

5 **Q. Why does WorldCom object to allowing Verizon to monitor its access to or**  
6 **use of CPNI?**

7 A. The monitoring provision proposed by Verizon is excessive and intrusive. In  
8 addition, there are serious risks that Verizon would abuse the information it obtained  
9 through monitoring the CPNI.

10 **Q. Please explain the risk of abuse.**

11 A. When WorldCom speaks with a potential subscriber, it asks whether it may access  
12 the customer's records. If the customer consents, WorldCom will access the record. As I  
13 noted earlier, the customer record contains CPNI. Giving Verizon a right to monitor  
14 WorldCom's CPNI usage would thus allow Verizon to determine which customers may  
15 have spoken with WorldCom regarding subscribing to new service. With that  
16 information, Verizon's marketing department could "troll" for new customers or embark  
17 upon marketing efforts to win back those customers who were previously Verizon  
18 subscribers. Either use of the information would be an abuse, and would give Verizon  
19 unfair competitive advantages.

20 In fact, this situation highlights the necessity of requiring Verizon's marketing  
21 and wholesale divisions to remain separate, and of preventing them from sharing  
22 information. But neither the wholesale or retail divisions should be allowed to monitor

1 WorldCom's CPNI usage in the manner Verizon has proposed.

2 **Q. If monitoring is unacceptable, how can Verizon make sure that WorldCom is**  
3 **using CPNI properly?**

4 A. First, WorldCom's internal procedures ensure that CPNI is not improperly  
5 accessed. The computer system requires that a button be pressed to check a box  
6 indicating that consent was obtained and verified. The information cannot be accessed if  
7 that box has not been checked.

8 Second, if Verizon needs additional assurance that WorldCom is following proper  
9 procedures and otherwise properly handling CPNI, it may conduct an audit. The audit  
10 would allow Verizon to review the records of those customers whose CPNI was accessed  
11 to determine whether the consent box has been checked. There might also be other ways  
12 of reviewing the records to make sure that consent was obtained. Therefore an audit  
13 would be more than sufficient to meet Verizon's needs.

14 **Q. How would the parties decide the terms on which the audit occurs?**

15 A. The interconnection agreement contains an auditing provision, which would be  
16 applicable in the context of CPNI as well as other circumstances in which audits are  
17 required.

18 **Q. Has Verizon taken a position on this issue?**

19 A. Yes.

20 **Q. Please summarize your reading of Verizon's position.**

21 A. Verizon has stated that it should be allowed to monitor WorldCom's CPNI usage.  
22 It claims that it "takes seriously" its duty to protect customer's CPNI and that monitoring

1 WorldCom's usage of CPNI is the primary means by which it can do that. Verizon also  
2 suggests that WorldCom may improperly access CPNI unless Verizon monitors its usage.

3 **Q. Do you agree with Verizon's position?**

4 A. No.

5 **Q. Please explain why you disagree with Verizon's position.**

6 A. I agree that the protection of CPNI is important. But the method Verizon  
7 advocates is unacceptable for several reasons.

8 First, Verizon's suggestion that WorldCom will access CPNI without customer  
9 approval is incorrect. When fielding calls from customers, WorldCom asks the customer  
10 whether he or she is willing to consent to access of the customer's records, that consent is  
11 then verified by a third party, and only then does WorldCom access the CPNI. And as I  
12 noted, the computer system requires an affirmative indication that consent was requested,  
13 obtained, and verified.

14 Second, as I explained earlier, an auditing mechanism is a more appropriate  
15 means of addressing Verizon's concerns, and is not subject to the abuse that could ensue  
16 if the monitoring right were granted.

17 Finally, Verizon is not the appropriate "enforcer" in this situation. Monitoring is  
18 the job of consumer protection agencies, the FCC, or other neutral and qualified entities.  
19 Verizon and WorldCom are fierce competitors, and a competitor is not the proper party to  
20 monitor a company's operations. Although WorldCom fully intends to comply with the  
21 rules, we strongly object to allowing Verizon to police that compliance. I am not aware  
22 of any FCC ruling that authorizes Verizon to play the role that it is attempting to take.



1 **Issue I-11**

2 *May Verizon summarily and unilaterally terminate WorldCom's access to the OSS*  
3 *unbundled network element?*

4 **Q. Please summarize WorldCom's position on Issue I-11.**

5 A. WorldCom opposes the inclusion in the interconnection agreement of a term that  
6 would allow Verizon to summarily and unilaterally terminate WorldCom's access to the  
7 operations support systems ("OSS") unbundled network element. Because the OSS UNE  
8 is critical to WorldCom's ability to compete with Verizon, termination of that access  
9 would have severe and anticompetitive results.

10 **Q. What is OSS?**

11 A. Operations Support Systems are all of the systems, databases, business processes,  
12 and personnel needed to ensure that a local exchange carrier can satisfy the needs and  
13 expectations of its customers.

14 **Q. Why is access to the OSS UNE critical to WorldCom's ability to compete**  
15 **with Verizon?**

16 A. The fundamental importance to a CLEC of having nondiscriminatory access to  
17 the ILEC's OSS is well established. This Commission has emphasized that  
18 "nondiscriminatory access to these systems, databases, and personnel is integral to the  
19 ability of competing carriers to enter the local exchange market and compete with the

1 incumbent LECs.”<sup>1</sup> It has added that “without nondiscriminatory access to the BOC’s  
2 OSS, a competing carrier ‘will be severely disadvantaged, if not precluded altogether,  
3 from fairly competing in the local exchange market.’”<sup>2</sup> Because of the importance of  
4 OSS, the burden rests with the ILEC to show that CLECs have access of the same  
5 quality, reliability, accuracy, and timeliness to the same OSS functionalities as the ILEC  
6 and that the ILEC can sustain the requisite level of performance while supporting  
7 commercial volumes of CLEC transactions.

8 As the Commission is aware, there are five basic OSS systems: pre-ordering,  
9 ordering, provisioning, billing, and repair and maintenance. In performing these  
10 functions, it is important that the ILEC minimize reliance on manual processes.  
11 Ordinarily, manual access arrangements are not compatible with WorldCom’s needs as a  
12 new entrant. Every manual intervention causes delay, sometimes substantial delay, and  
13 creates a significant risk of error. By relying on manual intervention, an ILEC makes its  
14 competitors dependent on the efficiency, and accuracy of its own employees – including  
15 their incentive or lack of incentive to be efficient and accurate. Manual arrangements  
16 also increase a CLEC’s costs of managing and monitoring the ILEC’s process. This  
17 Commission has recognized, therefore, that reliance on manual processing generally  
18 results in poor ILEC performance as commercial volumes increase.

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<sup>1</sup> In re Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. For Provision of In-Region InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 F.C.C.R. 20,599 ¶83 (Oct. 13, 1998).

<sup>2</sup> In re Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, Order, 15 F.C.C.R. 5413 ¶ 83 (March 9, 2000) (internal quotations omitted).

1 In sum, access to OSS is essential to WorldCom's ability to do business because  
2 without OSS WorldCom would be unable to complete the processes necessary to  
3 compete as a carrier.

4 **Q. Why does WorldCom oppose giving Verizon a termination right?**

5 A. As I explained above, OSS is so critical to WorldCom's ability to offer service  
6 that termination of access to OSS would put WorldCom out of business. Therefore,  
7 allowing Verizon to terminate WorldCom's access to OSS for various perceived abuses  
8 would be both unlawful and unreasonable.

9 **Q. Why would it be unlawful to terminate WorldCom's access to OSS?**

10 A. The law requires that Verizon offer WorldCom nondiscriminatory access to OSS.  
11 This Commission's regulations expressly identify OSS as a network element that Verizon  
12 must provide on an unbundled basis. See 47 C.F.R. § 51.319(g). This Commission  
13 reaffirmed the necessity of access to OSS in In The Matter Of Implementation Of The  
14 Local Competition Provisions Of The Telecommunications Act Of 1996, Third Report  
15 and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCCR 3696 ¶¶ 421-  
16 437 (Nov. 5, 1999). Termination of access to OSS violates each of these legal  
17 requirements.

18 **Q. Why would termination of access to OSS put WorldCom out of business?**

19 A. Access to OSS is essential for WorldCom to process orders, bill customers, and  
20 conduct maintenance. If WorldCom cannot perform those functions it cannot  
21 successfully operate as a telecommunications carrier.

1   **Q.     Why would it be unreasonable to give Verizon a right to terminate access to**  
2   **OSS?**

3   A.     A company should not be given a unilateral right to take actions that could  
4   destroy its competitor's ability to do business. That is precisely what would result,  
5   however, if Verizon were given the right to terminate WorldCom's access to the OSS  
6   UNE whenever it deemed that a perceived abuse had occurred. As a competitor  
7   interested in protecting its monopoly market share, Verizon would have every incentive  
8   to impede WorldCom's ability to do business; and terminating access to OSS would be  
9   an effective weapon towards that end. Even if Verizon did not have malicious intentions,  
10   the temptation and risk of abuse is quite substantial. Such power should only be given to  
11   a neutral third party.

12   **Q.     Without the termination right, how could Verizon make sure that**  
13   **WorldCom complied with its contractual obligations?**

14   A.     If Verizon believes that WorldCom is not acting in compliance with its  
15   obligations, it should inform WorldCom of the perceived problem. At that point, the  
16   parties should negotiate to find a mutually acceptable means of addressing the perceived  
17   problem. This type of negotiation is the standard means of resolving such disputes, and  
18   is generally effective. If WorldCom and Verizon cannot agree, Verizon could bring a  
19   complaint against the carrier for breach of contract, or seek enforcement of the allegedly  
20   breached term in the state commission or before the arbitrator. Unilateral termination is a  
21   self-help remedy that has no place in a negotiated interconnection agreement.

1    **Q.     Have you reviewed Verizon’s position on this issue?**

2    A.     Yes.

3    **Q.     Please summarize your reading of Verizon’s position.**

4    A.     Verizon says that it “must be vigilant in assuring performance with the  
5    contractual arrangements by which [WorldCom] will use the systems.” It also says that  
6    “Complete compliance with the OSS requirements is vitally important to Verizon and all  
7    who rely on its network. There must be stringent diligence by AT&T, WorldCom and  
8    Cox in carrying out these provisions, and the suspension remedy for an uncured default in  
9    performance is consistent with that requirement.”

10   **Q.     Do you agree with Verizon’s position?**

11   A.     I agree that compliance with OSS requirements is important, but I do not agree  
12   with Verizon’s proposed remedy.

13   **Q.     Why do you disagree with Verizon’s proposed remedy?**

14   A.     First, WorldCom has every incentive to be diligent in attempting to comply with  
15   the contractual requirements regarding OSS because OSS is the lifeline of the business.  
16   WorldCom would not damage Verizon’s OSS because that would prevent the OSS from  
17   functioning properly, which would impede WorldCom’s ability to use it for billing,  
18   maintenance, and ordering. For the same reason, WorldCom would not deliberately use  
19   the OSS in an improper manner.

20         Second, as I explained earlier, there are more reasonable means of addressing  
21   Verizon’s concerns that OSS is used properly. Negotiations would serve this purpose,  
22   and in the alternative (or if negotiations fail) Verizon could petition the commission for

1 enforcement of the contractual term that WorldCom has allegedly violated.

2 **CONCLUSION**

3 **Q. Does this conclude your testimony?**

4 **A. Yes.**

I, Sherry Lichtenberg, hereby certify under penalty of perjury that the foregoing is true and correct.

Executed on July <sup>th</sup>26, 2001.

  
Sherry Lichtenberg



Kecia L. Howard  
Notary Public  
Commonwealth of Virginia  
My Commission Expires Aug. 31, 2003

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
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to Section 252(e)(5) of the	)	
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Expedited Arbitration	)	
_____	)	

**DIRECT TESTIMONY OF MARK ARGENBRIGHT**

**ON BEHALF OF WORLDCOM, INC.**

**(Issue I-9)**

**July 31, 2001**



1    **Q.     Please state your name and business address.**

2    A.     My name is Mark E. Argenbright. My business address is Six Concourse  
3    Parkway, Suite 3200, Atlanta, Georgia 30328.

4    **Q.     By whom are you employed and in what capacity?**

5    A.     I am employed by WorldCom, Inc. in the Law and Public Policy group and hold  
6    the position of Senior Staff Specialist, State Regulatory Policy. In my current position, I  
7    assist in the development and coordination of WorldCom's regulatory and public policy  
8    initiatives for the company's domestic operations. These responsibilities require that I  
9    work closely with our state regulatory groups across the various states, including  
10   Virginia.

11   **Q.     Please summarize your telecommunications background and education.**

12   A.     My previous position within WorldCom was Senior Manager, Regulatory  
13   Analysis, in which I was responsible for performing regulatory analysis in support of a  
14   wide range of company activities. Prior to that, I was employed by the Anchorage  
15   Telephone Utility (now known as Alaska Communications Systems) as a Senior  
16   Regulatory Analyst and American Network, Inc. as a Tariff Specialist. I have worked in  
17   the telecommunications industry for sixteen years, with the majority of my positions in  
18   the area of regulatory affairs. I received a Bachelor of Science Degree in Business  
19   Administration from the University of Montana in 1980.

20   **Q.     What is the purpose of your testimony?**

21   A.     The purpose of my testimony is to explain why Verizon should not be allowed to  
22   include a term in the Virginia interconnection agreement that would cap WorldCom's  
23   rates for carrier-to-carrier services at the level of Verizon's rates for comparable services.

1 This testimony relates to Issue I-9, which is described in the Petition for Arbitration as  
2 follows:

3 **Issue I-9**

4 *May Verizon place a cap on WorldCom's charges to Verizon at the level of Verizon's*  
5 *charges to WorldCom?*

6 **Q. Please summarize WorldCom's position on this issue.**

7 A. WorldCom objects to allowing Verizon to include language in the interconnection  
8 agreement that would require WorldCom to offer certain services to Verizon at rates that  
9 are equal to or lower than the charges that Verizon may impose for comparable services,  
10 and that would only allow WorldCom to set rates in excess of Verizon's rates if it can  
11 demonstrate to Verizon's satisfaction that WorldCom's costs exceed Verizon's charges  
12 for comparable services.

13 **Q. Is there any proposed contract language that addresses this issue?**

14 A. Yes. In Section 3 of its Pricing Attachment, Verizon has proposed the inclusion  
15 of the following language:

16 **\*\*CLEC Prices**

17 Notwithstanding any other provision of this Agreement, the Charges that \*\*CLEC  
18 bills Verizon for \*\*CLEC's Services shall not exceed the Charges for Verizon's  
19 comparable Services, except to the extent the \*\*CLEC has demonstrated to  
20 Verizon, or, at Verizon's request, to the Commission or the FCC, that \*\*CLEC's  
21 cost to provide such \*\*CLEC Services to Verizon exceeds the Charges for  
22 Verizon's comparable Services.

23

1           Because WorldCom believes this is unlawful and unwarranted, it has not  
2   proposed any competing contract language, but instead has urged the Commission to  
3   reject Verizon's proposed contract terms.

4   **Q.     What types of services are implicated by this issue?**

5   A.     There are two primary types of services that WorldCom provides to Verizon:  
6   switched access and transport facilities such as interconnection trunks. Switched access  
7   charges compensate WorldCom for using its local switching facilities to originate and  
8   terminate toll calls to and from WorldCom end users. For example, Verizon purchases  
9   terminating switched access from WorldCom when WorldCom is the terminating carrier  
10   for toll calls originating from Verizon subscribers to WorldCom end users. In addition,  
11   WorldCom may provide transport facilities such as interconnection trunks to other  
12   carriers, and Verizon may choose to purchase those from WorldCom.

13   **Q.     Is there a rate schedule for WorldCom's provision of those services?**

14   A.     Rates for both switched access and transport facilities such as interconnection  
15   trunks are contained in WorldCom's tariffs, which are filed with the state commissions –  
16   the VSCC in this instance.

17   **Q.     What factors, if any, does WorldCom consider when proposing rates for**  
18   **inclusion in the tariff?**

19   A.     When setting rates for inclusion in the tariff, WorldCom proposes rates that will  
20   fairly compensate WorldCom for the provision of the services being offered by  
21   WorldCom, that WorldCom deems reasonable, and that WorldCom believes are  
22   consistent with applicable Virginia law.

1    **Q.     To your knowledge, does applicable law require that WorldCom's tariffed**  
2    **rates for these services be set equal to or lower than Verizon's rates for comparable**  
3    **services?**

4    A.     No – neither Virginia law nor federal law requires that WorldCom's tariffed rates  
5    for intrastate switched access or transport facilities be equal to or lower than Verizon's  
6    rates for comparable services. If the law contained such a requirement, WorldCom  
7    would certainly comply. However, to add such a provision to the interconnection  
8    agreement would go beyond WorldCom's legal obligations.

9    **Q.     Why does WorldCom object to including Verizon's proposed language?**

10   A.     The primary flaw in Verizon's proposed language is its improper assumption that  
11   these rates are set in a vacuum, and its failure to acknowledge that there are external  
12   controls that ensure that the rates – even if they exceed Verizon's charges for comparable  
13   services – are reasonable. There are two such external controls – the Virginia laws and  
14   procedures governing the filing of tariffs, and the market forces that affect the prices of  
15   interconnection trunks and similar transport facilities.

16           WorldCom's intrastate switched access rates, as well as rates for other carrier-to-  
17   carrier services, are contained in a tariff. Consistent with Virginia law, WorldCom  
18   submits that tariff to the VSCC for approval. If the VSCC deems the rates unreasonable,  
19   it may reject them or require WorldCom to modify them. In light of that, Virginia law  
20   gives tariffed rates a presumption of reasonableness. Accordingly, WorldCom's current  
21   rates for switched access must be presumed reasonable, even if they exceed Verizon's  
22   rates for comparable services.

1 Virginia law does not contain a mandatory requirement that WorldCom's tariffed  
2 rates be equal to or lower than Verizon's rates for comparable services; nor does it  
3 impose a mandatory price cap. See 20 Va. Admin. Code 5-400-180. Instead, the VSCC  
4 retains discretion to allow higher rates provided that pricing the services at the higher  
5 rates is not contrary to the public interest. See id. The regulations do not require CLECs  
6 to engage in the type of comparative cost-analysis that Verizon has proposed (pursuant to  
7 which higher rates would only be allowed if WorldCom's costs exceed Verizon's  
8 charges). Further, the applicable Virginia rules do not indicate that the rates must be  
9 compared to those of a particular ILEC. Instead, the rates generally need only be equal to  
10 or lower than the highest tariffed rates of any ILEC offering comparable services within  
11 the state. See 20 Va. Ad. Code 5-400-180.

12 The existence of this detailed state mechanism for the review of tariffed rates  
13 precludes adoption of Verizon's proposed plan. Pursuant to state law, WorldCom must  
14 adhere to the rates in its tariffs – and is without authority to establish different rates  
15 through an interconnection agreement or any other method. See Chesapeake & Potomac  
16 Tel. Co. v. Bles, 243 S.E.2d 473, 1013 (Va. 1978) (“No public service corporation ha[s]  
17 any authority, by express contract, or otherwise, to change or vary the schedule of rates  
18 and charges approved by the corporation commission. . . .”).

19 Further, in light of this detailed state regulatory regime, WorldCom's tariffed  
20 rates for switched access and other carrier-to-carrier services must be presumed  
21 reasonable as they currently exist. Under Virginia law, WorldCom's rates may exceed  
22 Verizon's rates so long as another ILEC is offering the comparable services at a rate  
23 equal to or lower than WorldCom's rate levels, or if the VSCC deems that the higher

1 rates are not contrary to the public interest. The VSCC's approval of WorldCom's  
2 current tariffed switched access rates indicates that it has made this judgment. That  
3 judgment cannot, and should not, be revoked in an interconnection agreement, as Verizon  
4 has proposed.

5 Moreover, giving Verizon the power to review, accept, or reject WorldCom's  
6 rates for these services would be inconsistent with the existing state regulatory regime,  
7 because Verizon would be effectively fulfilling the role that state law plainly allocates to  
8 the VSCC. Virginia law recognizes that a neutral commission such as the VSCC is the  
9 appropriate body to determine whether tariffed rates are reasonable or should be limited.  
10 There is no reason to allow Verizon to impose such a cap in the interconnection  
11 agreement, and then set itself up as a reviewing body for 'exceptions' to that rule.  
12 WorldCom does not justify its rates to its competitors, and to create such a right for  
13 Verizon in Virginia would be unprecedented and unlawful.

14 In addition, market forces ensure the reasonableness of the rates for transport  
15 facilities and similar services, as WorldCom, utilizing its tariffed rates, competes with  
16 other carriers as a provider of those services.

17 **Q. Are there reasons WorldCom's rates might differ from Verizon's?**

18 A. Yes. It would be unreasonable to require parity between WorldCom's rates and  
19 Verizon's rates given the lack of parity between the carriers' networks. WorldCom is a  
20 new entrant, with a nascent network that is not yet fully deployed. In contrast, Verizon is  
21 an incumbent monopolist, with a fully deployed network. In addition, the two companies  
22 utilize different network architectures. Finally, Verizon's monopoly status and rate of  
23 return regulation may have allowed it to fund the cost of its network and network

1 architecture through past subsidies and monopoly overcharges. As a new entrant,  
2 WorldCom has not had the benefit of building its network with the certainty of a  
3 guaranteed rate of return. Therefore, even if both carriers provide a service such as  
4 switched access, the means of providing the service is hardly identical. WorldCom's  
5 costs may or may not exceed Verizon's costs, and there may well be variants in the  
6 quality of the service – for example, WorldCom's service may be superior in terms of  
7 functionality and/or quality.

8       It would also be unduly burdensome to require WorldCom to demonstrate that its  
9 costs exceed Verizon's charges (or Verizon's costs – which would appear to be a more  
10 relevant comparison). WorldCom does not conduct the types of detailed cost studies that  
11 Verizon – as an incumbent monopolist – is required to produce to justify its rates.  
12 However, in order to provide the type of comparative cost information that Verizon  
13 attempts to require, WorldCom would need the same type of detailed cost allocation data  
14 that Verizon produces. This would be extremely difficult, and the differences between  
15 the two networks would further complicate this type of comparison. It would be unfair to  
16 subject a new entrant to the type of rigorous scrutiny that Verizon endures precisely  
17 because it is a monopoly.

18 **Q. Have you reviewed Verizon's response to this issue?**

19 A. Yes.

20 **Q. Please summarize your understanding of Verizon's position.**

21 A. Verizon makes four primary points in its Response to Issue I-9. First, Verizon  
22 suggests that the fact that the VSCC can determine the reasonableness of rates for  
23 services indicates that WorldCom cannot charge rates for services that exceed Verizon's

1 rates for similar services. Second, Verizon claims that CLECs have misstated the law,  
2 and then points to two PUC decisions in other states which it claims support its view that  
3 CLECs should charge the same rates for certain wholesale services. Third, Verizon  
4 claims that it is “presumptively fair” to require CLECs to charge no more than the rates  
5 the ILEC may charge. Fourth, Verizon claims that VSCC rules cap WorldCom’s retail  
6 prices, and suggests that the same rule should apply to carrier-to-carrier services. In  
7 addition, Verizon cites to this Commission’s Access Charge Reform Order as support for  
8 its price cap.

9 **Q. Do you agree with Verizon’s responses?**

10 A. No.

11 **Q. Please explain the reasons that you disagree with Verizon’s position.**

12 A. I agree with Verizon’s factual statement regarding VSCC review of rates, but I  
13 disagree with the conclusion that Verizon seeks to draw from that fact. The VSCC may  
14 review WorldCom’s rates for reasonableness, and in fact is presumed to have done so.  
15 As I noted earlier, however, the VSCC’s ability to review the tariffed rates does not  
16 support Verizon’s arguments for a price cap; to the contrary, this fact confirms  
17 WorldCom’s position that its tariffed rates for these services are reasonable, even if they  
18 exceed Verizon’s rates for comparable services.

19 Second, WorldCom has only asserted that neither federal law nor Virginia law  
20 requires the imposition of the type of price cap that Verizon has proposed. Neither of the  
21 two state commission decisions that Verizon has cited supports the inclusion of Verizon’s  
22 proposed language. Neither state commission suggests that Verizon should be the final  
23 party to decide whether to allow higher rates; both envision state commission



1 determinations of reasonableness. WorldCom is not attempting to insulate its rates from  
2 that type of review – in fact, as I have explained, that reasonableness determination is  
3 fully within the VSCC’s power because these rates are tariffed. Further, neither decision  
4 imposes a general price cap on CLECs’ rates. Instead, they simply provide a mechanism  
5 by which the relevant state commission may determine the reasonableness of the rates; if  
6 the rates are comparable to the ILEC’s rates they are presumed reasonable, but otherwise  
7 some explanation is required.

8 Third, it is not “presumptively fair” to limit WorldCom’s rates to the levels of  
9 Verizon’s rates. As I have explained, the carriers are not similarly situated, and their  
10 provision of these services differs given the differences between the carriers’ networks.  
11 It would therefore be unfair to cap WorldCom’s rates at the level of Verizon’s rates.

12 Although Verizon has failed to identify a specific VSCC rule or decision that caps  
13 a CLEC’s retail rates at the level of the ILEC’s retail prices, its response is presumably  
14 referring to the section of the administrative code that I discussed earlier in this  
15 testimony, 5-400-180, which establishes the “rules governing the offering of competitive  
16 local exchange telephone service.” As I have explained, that regulation does not support  
17 imposing the type of price cap that Verizon has proposed, let alone support Verizon’s  
18 efforts to set itself up as judge and jury with the power to review and approve  
19 WorldCom’s proposed rates.

20 Finally, this Commission’s Access Charge Order, which addressed CLEC charges  
21 for federally tariffed interstate access services provided to interexchange carriers for  
22 termination of long distance calls, does not support Verizon’s position. This Commission  
23 did not impose a price cap on CLECs. Instead, it adopted an interim measure, which was

1 designed to “decrease [CLECs’ rates] over time.” In the Matter of Access Charge  
2 Reform, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC  
3 Docket No. 96-262 (FCC rel’d Apr. 27, 2001) ¶ 4. In fact the Commission expressly  
4 declined to “immediately move CLEC access rates to the rate of the competing ILEC,”  
5 and noted that “CLECs have, in the past, set their rates without having to conform to the  
6 regulatory standards imposed on ILECs, and this Commission has twice ruled, in essence,  
7 that a CLEC’s rate is not per se unreasonable merely because it exceeds the ILEC rate.”  
8 Id. ¶ 37. Although the Commission set a benchmark rate at or below which CLEC  
9 charges would be presumed reasonable, it did not set that rate at parity with the ILEC rate  
10 because “such a flash cut likely would be unduly detrimental to the competitive carriers  
11 that have not previously been held to the regulatory standards imposed on ILECs.” Id. ¶  
12 45.

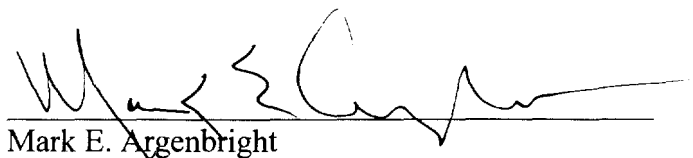
### 13 CONCLUSION

14 **Q. Does this conclude your testimony?**

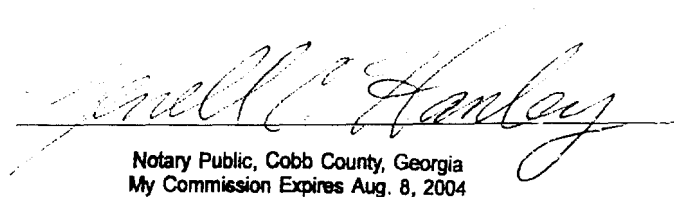
15 **A. Yes.**

I, Mark E. Argenbright, hereby certify under penalty of perjury that the foregoing is true and correct.

Executed on July 24, 2001.



Mark E. Argenbright



Notary Public, Cobb County, Georgia  
My Commission Expires Aug. 8, 2004

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
Petition of WorldCom, Inc. Pursuant	)	
to Section 252(e)(5) of the	)	
Communications Act for Expedited	)	
Preemption of the Jurisdiction of the	)	CC Docket No. 00-218
Virginia State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon-Virginia, Inc., and for	)	
Expedited Arbitration	)	
_____	)	

**DIRECT TESTIMONY OF CHUCK GOLDFARB**

**ON BEHALF OF WORLDCOM, INC.**

**(Issue II-1)**

**July 31, 2001**

## INTRODUCTION

**Q. Please state your name, title, and business address.**

A. My name is Chuck Goldfarb. I am director for law and public policy at WorldCom, Inc.  
My business address is 1133 19<sup>th</sup> Street, NW, Washington, DC 20036.

**Q. Please describe your qualifications and experience as they relate to this Proceeding.**

A. I am an economist with 27 years experience in both the public and private sectors. In my current position, I am responsible for developing and coordinating WorldCom's analysis of major public policy issues, such as unbundled network elements and universal service. In my eleven years at MCI/WorldCom, I have performed many tasks, including preparing analysis and submissions to the FCC, testifying as an expert witness on costing, unbundling, and other public policy issues in hearings and panels at many state regulatory commissions (Illinois, New Hampshire, Colorado, Maryland, Massachusetts, Vermont), participating in panels at NARUC, and coordinating all of WorldCom's economic and technical witnesses in the various state arbitration proceedings that followed passage of the 1996 Telecommunications Act. Prior to joining WorldCom, I was an economic consultant for four years, during which time I was an expert witness in private antitrust cases in federal and state courts and in proceedings at state regulatory commissions. From 1974 to 1986, I was an economist and manager at an alphabet soup of federal agencies – FTC, FCC, and OMB. At the FTC, I supervised economists in antitrust cases. At the FCC, I was the lead staffer in the Commission's radio deregulation proceeding and then became assistant chief of the (then) Broadcast Bureau. At OMB, I initiated the internal government review that ultimately resulted in the creation of FTS2000, the first program for competitive bidding for the federal government's telecommunications needs. I

1 received a B.A. in economics from Brandeis University and an M.A. in economics from the  
2 University of Pennsylvania.

3 **Q. What is the purpose of your testimony?**

4 A. The purpose of my testimony is to explain why the best rate design for unbundled  
5 switching is an entirely flat-rated price structure in the form of a single per-port charge. This  
6 testimony relates to Issue II-1, which is described in the Petition for Arbitration as follows:

7 **Issue II-1**

8 *Should Verizon be required to reduce recurring rates for certain Unbundled Network Elements*  
9 *("UNEs")?*

10 **Q. What principles should be followed when determining rate design?**

11 A. There are two important principles. First, rate design should structure prices to most  
12 closely reflect underlying forward-looking economic costs. Such rate design allows producers  
13 and consumers to make individual economic decisions that are efficient from both their private  
14 perspective and from society's perspective. This will maximize consumer welfare. Prices  
15 provide the signals that market participants rely upon to make buy/sell, lease/invest, and other  
16 economic decisions. In a market economy, prices determine the way society's resources are  
17 allocated by affecting the decisions of millions of producers and consumers. If prices do not  
18 reflect the underlying forward-looking economic costs associated with the resources, then the  
19 subsequent buy/sell and lease/invest decisions will not reflect the underlying costs and will result  
20 in a distorted – and inefficient – allocation of resources. Based on the prices they face, both  
21 producers and consumers have the incentive to make rational decisions. But those decisions will  
22 not result in an efficient allocation of resources if the prices do not reflect underlying forward-  
23 looking economic costs.

1 In addition, rate design that reflects underlying forward-looking economic costs  
2 minimizes the ability of a monopoly provider to discriminate against dependent competitors by  
3 creating the same underlying cost structure for all.

4 Second, rate design should be stable and impose minimal administrative and auditing  
5 burdens on the parties. For prices to provide useful market signals, they must be sufficiently  
6 stable that customers can use them effectively in their market decisions. Moreover,  
7 administrative and auditing burdens impose deadweight losses that can have significant  
8 anticompetitive consequences.

9 **Q. What is the underlying cost structure of Verizon's switching?**

10 A. Switching has several dimensions, each with different underlying costs. A switch must  
11 be sized with the capacity to meet the projected need for memory and processing power as well  
12 as the projected number of connections (ports) at periods of peak demand. As explained in the  
13 testimony of Catherine Pitts, switch vendors have determined that it is most efficient to design  
14 switches with memory and processing power that far surpass expected demand, so that as  
15 demand grows these switches will face "exhaust" on the number of ports before they face  
16 memory or processing power exhaust. Because switches are built in this fashion, switching costs  
17 are driven primarily by the number of ports, not by usage or features (that require additional  
18 memory or processing capacity). These ports are used to serve either Verizon's end-user  
19 customers or the customers of CLECs who purchase unbundled switching from Verizon.

20 Based on publicly available information, Ms. Pitts estimates that approximately 50 to 70  
21 percent of Verizon's switching costs are dedicated port and fixed costs that are non-traffic  
22 sensitive and the remaining 30 to 50 percent of switching costs are traffic sensitive. Ms. Pitts  
23 indicates that the traffic sensitive costs primarily reflect the equipment engineered to satisfy peak

1 period usage, i.e., these are peak period-driven capacity costs. As Terry Murray explains in her  
2 testimony, peak usage (and hence peak period-driven capacity needs) will vary from switch to  
3 switch, depending on the characteristics of the customer base (e.g., residential vs. business  
4 customers) served by the switch.

5 Thus, there are two primary cost causers – the number of ports and central office-specific  
6 peak period-driven capacity needs.

7 **Q. What is the best rate design for Verizon’s port-related (non-traffic sensitive)**  
8 **switching costs?**

9 A. The best rate design to recover Verizon’s port-related (non-traffic sensitive) switching  
10 costs is a flat-rated port charge. Such a charge directly reflects the underlying costs and is easy  
11 to implement and audit.

12 **Q. What is the best rate design for Verizon’s central office-specific peak period**  
13 **capacity-driven (traffic sensitive) switching costs?**

14 A. In theory, the best rate design would be to assign these peak period capacity-driven costs  
15 across usage at different times of the day and different days of the year based on the likelihood of  
16 a peak occurring at that time – some sort of central office-specific peak period usage charge. In  
17 practice, however, it would be virtually impossible administratively to implement such a charge.  
18 It would not be possible to perform the necessary data collection and verification tasks in a  
19 timely and cost-effective fashion. The contentious disputes that exist today about aggregate  
20 minutes of use across all switches, used as the base on which to calculate average minute-of-use  
21 charges, would pale in comparison to the disputes about central office-specific total minutes and  
22 peak period minutes-of-use.



1           It therefore is necessary to use a different rate design to recover Verizon's peak period  
2 capacity-driven traffic sensitive switching costs. The two obvious potential choices are an  
3 average minute-of-use charge (dividing total traffic sensitive costs by total minutes of use) and a  
4 flat-rated per port charge (dividing total traffic sensitive costs by total ports ). Of the two, the  
5 flat-rated port charge is the better.

6       **Q.     Why is use of a flat-rated port charge better than use of an average minute-of-**  
7 **use charge to recover Verizon's peak period capacity-driven traffic sensitive switching**  
8 **costs?**

9       A.     There are several reasons why a flat-rated port charge is better. First, when the rate for an  
10 input (such as switching) diverges from the underlying forward-looking cost of that input, so that  
11 CLECs' cost structures differ from the ILEC's cost structure, and the ILEC can set the price  
12 structure and levels of its retail service offerings, then the ILEC will have the ability to  
13 manipulate those retail service offerings and rates in an anticompetitive fashion. Ms. Murray  
14 provides a good example of this in her testimony, describing the potential unfair advantage that  
15 Verizon would have in offering usage-based services by inflating its competitors' off-peak  
16 switching costs relative to those of Verizon:

17           Anyone familiar with cellular and PCS pricing plans can easily imagine  
18 Verizon offering a local exchange service with a flat rate just sufficient to  
19 recover loop and retail-related costs, a per-minute charge only for peak  
20 period minutes and unlimited off-peak calling without any additional  
21 charge. A competitor that must pay Verizon a positive price for every off-  
22 peak minute would have difficulty matching Verizon's price, even though  
23 the underlying cost to Verizon of supplying off-peak switching to the

1 competitor would be equal to the cost that Verizon incurs to offer the same  
2 off-peak switching directly to the end-user.

3 There would be far less opportunity for such anticompetitive mischief if Verizon had to  
4 recover its traffic sensitive switching costs through a flat-rated port charge.

5 Second, on the purely practical, implementation level, it is far easier for competitors to  
6 audit a flat-rated per port switching charge than a minute-of-use charge. WorldCom has more  
7 than two decades of experience auditing the usage-based bills from Verizon and other ILECs for  
8 essential inputs (such as access services) for which there are no alternative providers. Due to  
9 ILEC overcharging, WorldCom often makes up-front payments and only receives rebates for  
10 overpayment long after the fact. To the extent such auditing costs are unnecessary, they should  
11 be avoided. It will be much simpler and less contentious to audit per port switching charges than  
12 to audit per-minute-of-use charges.

13 Third, one of the most contentious issues in several recent state cost cases has been  
14 determining the total minutes-of-use on ILEC switches, which is the denominator in the  
15 calculation of average minute-of-use charges. To the extent Verizon is successful in understating  
16 the number of minutes in the denominator, it is successful in inflating the average per-minute-of-  
17 use rate element and overcharging the CLECs. In the recent rate cases in New York and New  
18 Jersey, Verizon's convoluted method of determining the number of minutes to be used in the  
19 denominator of the rate calculation was a significant issue. If the Commission were to employ a  
20 per port switching charge to cover all switching costs, it would be able to avoid this very  
21 contentious battle. Since average per-minute-of-use charges do not reflect peak period capacity-  
22 driven costs, in any case, it certainly does not make sense to get caught up in a time-and-  
23 resource-consuming regulatory battle over the measurement of minutes-of-use. The

1 administratively simplest approach is to employ a per port switching charge. This also will  
2 foster competition by reducing unnecessary costs on new entrants.

3 Fourth, Verizon's current residential retail rates are flat-rated. This follows the pattern in  
4 most states, where regulators have favored flat-rated residential local service rates. If Verizon's  
5 switching rate were to have a per-minute-of-use component, then new entrants using UNE-  
6 platform would face a usage-based cost structure and would have to choose between setting flat-  
7 based residential retail rates that did not reflect their underlying costs – and likely lose money  
8 serving high-usage customers – or trying to compete with Verizon while using a usage-sensitive  
9 retail rate that was both unfamiliar to many customers and higher than the Verizon rate for high-  
10 usage customers. A flat port charge for switching will maximize competitive provision of flat-  
11 based residential service.

12 In conclusion, use of a single flat per port switching charge to recover Verizon's port-  
13 driven non-traffic sensitive and peak period capacity-driven traffic sensitive switching costs  
14 represents the best rate design.

## 15 CONCLUSION

16 **Q. Does this conclude your testimony?**

17 **A.** Yes, it does.

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FEDERAL COMMUNICATIONS COMMISSION**

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to Section 252(e)(5) of the	)	
Communications Act for Expedited	)	
Preemption of the Jurisdiction of the	)	CC Docket No. 00-218
Virginia State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon-Virginia, Inc., and for	)	
Expedited Arbitration	)	

**AFFIDAVIT OF CHUCK GOLDFARB**

The undersigned, being of lawful age and duly sworn on oath, certifies the following:

I, Chuck Goldfarb, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

*Chuck Goldfarb*  
Chuck Goldfarb

Subscribed and Sworn to before me this  
31<sup>st</sup> day of July, 2001.

*Maria A. Roszel*  
Notary Public

MARIA A. ROSSEL  
Notary Public District of Columbia  
My Commission Expires: 2/14/2006